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Forty-first session

SUMMARY RECORD OF THE 1043rd MEETING

Held at Headquarters, New York,
on Thursday, 28 March 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Sweden (continued) (CCPR/C/58/Add.7)

1. At the invitation of the CHAIRMAN, Mr. Correl, Mr. Lempert and Mr. Rundqvist (Sweden) took places at the Committee table.

2. Mr. WAKO, referring to section II of the list of issues, noted that aliens represented a large proportion of the labour market in Sweden and that in 1989 approximately 5,000 persons had been in the process of seeking asylum there. He wondered how their numbers affected such persons' enjoyment of human rights, what difficulties the situation had created for the Government, and how it was solving them.

3. Mr. CORELL (Sweden), noting that Sweden had provided detailed information on the matter in its tenth periodic report to the Committee on the Elimination of Racial Discrimination two weeks earlier, acknowledged that problems sometimes arose from the encounter between different cultures. There were isolated instances of harassment by Swedes but the courts were vigilant. On the whole, the influx of immigrants was seen as a positive phenomenon.

4. Mr. LEMPERT (Sweden) said that a wide range of problems arose both during the asylum-seeking process itself and during the subsequent process of absorption of those granted asylum. The primary aim of all the steps taken by the Government - starting with introductory courses on Swedish society given to selected refugees in the refugee camps, the formulation of employment and education plans and the provision of information to schools - was to place aliens in jobs as soon as possible. The International Labour Board had been given government funding to help it achieve that goal, and the Ombudsman against Ethnic Discrimination also assisted with problems.

Liberty and security of the person (articles 9, 10 and 11 of the Covenant) (section III of the list of issues)

5. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of Sweden, namely: (a) the results of the study on the application of the amendments to chapter 24 of the Code of Judicial Procedure concerning deprivation of liberty; (b) additional information on the conditions of compulsory care for alcoholics and drug abusers; (c) any departures from the provisions of the 1989 Aliens Act regarding the periods of time for pre-trial detention when applying the legislation on terrorism; (d) information on the enactment of the planned legislation to replace the Act on the Provision of Institutional Psychiatric Care, and the main features of such legislation; (e) the situation with respect to the implementation of the special provisions on the detention of aliens in the 1989 Aliens Act.

6. Mr. CORELL (Sweden), referring to section III (a), said that the report of the National Courts Administration issued in November 1989 had indicated that, prior to the amendment of the Code of Judicial Procedure (para. 84 of the report), slightly more than 50 per cent of cases of provisional detention had been examined by a judge within six days. Since the reform, the corresponding period had dropped to two days, with more than 90 per cent of all cases being examined within three days. The number of persons held in provisional detention had decreased by 6 per cent since the reform, although the number of suspects had actually increased, the possible explanation being that prosecutors, aware that their request for detention on remand was normally due the same day, were less likely to detain a suspect provisionally. The total time in detention, from the provisional decision until a judgement was reached, had decreased. In 1989, 62 per cent of cases had been settled within three weeks, as against 40 per cent in 1987, and only 12 per cent of cases had taken more than four weeks to settle as against 24 per cent in 1987. Speedier examination by a judge would seem to be a factor that strengthened the legal security of the individual.

7. The November 1989 report also showed that the number of decisions made by district court judges regarding detention on remand had increased by 29 per cent since the reform. Five per cent more of requests for such detention were being granted and detention on remand was being requested for a larger proportion of the provisionally detained suspects.

8. On the other hand, the report also indicated that a survey of judges, prosecutors, defence lawyers and policemen had shown that a considerable number of them (60 per cent of defence attorneys) felt that the quality of the investigative material available to the examining judge had deteriorated now that less time was available to prepare it, and that would seem to be a negative effect.

9. Mr. RUNDQVIST (Sweden), referring to section III (b) of the list of issues, said that the new Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act (para. 63 of the report) supplemented the Social Services Act and had the same goal: to preserve respect for the principles of self-determination and integrity. The prerequisites for compulsory care in connection with serious alcohol or drug abuse and the procedures for deciding on such treatment were described fully in paragraphs 64 to 67 of the report. The aim of compulsory care was to motivate the abuser so that he could be presumed capable of participating voluntarily in the treatment. Care was provided in special residential institutions run by county councils or municipalities and usually headed by a board of governors. Abusers requiring close supervision were sent to special institutions chosen by the National Board of Health and Welfare. Care began with hospital treatment in all cases where that was called for. The consultant of the hospital unit concerned ensured that the social welfare committee or the person in charge of the care institution was informed immediately if the abuser wished to leave the hospital, and the consultant could issue an order to prevent his leaving during the time needed to transfer him to an institution. The person in charge of the institution kept the social welfare committee constantly informed of the progress of the treatment and consulted the committee on important matters. He or she also issued the departure order when the patient was ready to

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leave the institution for some other form of care such as family care, and the social welfare committee made the necessary arrangements. The person in charge could also order the patient back to the institution when other care was no longer feasible. Before such other care began, the social welfare committee, in consultation with the patient and with the person in charge of the institution, drew up a plan for continuing care. If a patient had remained under institutional care for three months, the person in charge must report to the board of governors on the course of the care. The social welfare committee was responsible for making adequate post-care arrangements in terms of housing, employment, education, and continuing support to prevent a resumption of drug or alcohol abuse.

10. The new legislation specified permissible control measures such as body searches, superficial medical examination, and the inspection of incoming mail and packages, from which objects could be confiscated and at times destroyed or sold. Decisions to do so could be brought before the administrative courts.

11. The 1988 Act had expanded the provision of compulsory care because investigations had revealed a sharp rise in drug and alcohol abuse in the 1980s among the socially disadvantaged, and rising death rates among abusers. It amended the Social Services Act to clarify the responsibilities of social welfare committees and amended the 1981 Care of Alcoholics and Drug Abusers Act to include care at a stage when symptoms were less acute, so that an individual could be treated before his condition deteriorated too far. The amendments were aimed at helping borderline young abusers in particular. Under the new legislation, obvious negative social acts of abuse had to be taken into account when a court decided on admission to compulsory care.

12. Since the new legislation had come into effect, the number of persons under compulsory care had risen from approximately 350 in 1988 to approximately 750 in 1989, decisions on admission to compulsory care had risen from 15,000 to 16,000, and the average period of care had increased from approximately 75 days to approximately 130 days.

13. Mr. LEMPERT (Sweden), referring to section III (c) of the list of issues, said that the time-limits for pre-trial detention were the same in the 1989 Act on Terrorists as in the 1989 Aliens Act, namely, detention for 14 days in the first instance, with the possibility of requesting a decision on further detention provided there were strong grounds and after a hearing of the matter.

14. With reference to section III (e) of the list of issues, the new legislation on the detention of aliens had entered into force on 1 July 1990.

15. Mr. RUNDQVIST (Sweden) said that the new legislation on compulsory psychiatric care referred to in paragraph 68 of the report was being considered in Parliament, with a decision expected in late May 1991. The main aim of the bill was to adapt the law to the evolution of psychiatry, which had for some time favoured out-patient treatment and treatment at psychiatric clinics in ordinary hospitals. The bill would limit compulsory care more strictly, in order to strengthen the

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patient's capacity for independent living and for voluntarily continuing with treatment and support. It further regulated compulsory control measures such as the use of restraints, isolation, body searches or the inspection of mail. For instance, letters to or from a patient could no longer be inspected, although packages could. One important amendment established legal time-limits for periods of psychiatric care and ensured greater judicial control by making court proceedings mandatory after an initial period of care. As a rule, the patient was provided with official counsel. He also was normally assisted by a support person throughout his period of care.

16. The rules for mentally disturbed offenders had also been amended, although the changes were not as radical as those recommended by a 1984 government committee. The main changes involved court supervision of cases involving patients who had committed serious crimes or posed a threat of violence to others. Further information on the question could be included in Sweden's next report.

17. Mr. MAVROMMATIS, complimenting the Swedish delegation on the calibre of their replies, asked for clarification regarding compulsory care for alcohol or drug abusers. He noted that there had been an increase in both the number of persons confined under compulsory treatment and the amount of time spent in treatment, and was concerned that there might not be sufficient safeguards against abuse. For instance, could the six-month period of compulsory care (para. 64 of the report) be extended?

18. He was also wary of the idea of having immediate care orders (para. 67 of the report) issued by the police. He wondered whether the "police authority" referred to was a police board, and whether such immediate care orders could be challenged.

19. Regarding the justifications for a detention order (para. 81 of the report), he was concerned that making "reasonable suspicion" the criterion, rather than "probable cause" or "reasonable grounds", might open the way to a situation where the justification of a detention order was not really tested . He would like clarification as to the difference between the three terms and as to how the procedure worked in practice.

20. With regard to article 9 (4) of the Covenant, it would be interesting to know what reasons there could be, other than criminal charges, for detaining a citizen as described in paragraph 87 of the report. In connection with the same paragraph, it was not clear to him what kind of body could exist, other than a commission composed in accordance with the law and presided over by a judge.

21. He would welcome an explanation as to why an alien, as opposed to a citizen, could be detained for up to three days after having been taken into custody (para. 94 of the report).

22. He failed to see how it could ever be in the interests of a juvenile offender to be placed together with adult offenders, as paragraph 104 of the report maintained and would appreciate clarification of that point.

(Mr. Mavrommatis)

23. Lastly, he asked whether there were any cases of imprisonment on grounds other than an offence or a crime, such as contempt of court, failure to obey a court order, or failure to pay a fine or fulfil a civil court payment order.

24. Mrs. HIGGINS said that she had listened to the report with great interest, particularly where it dealt with bail, an area where she had had concerns in the past about the practice of the Nordic countries. Turning to paragraph 81 of the report, she felt that the distinction between "reasonable grounds" and "probable cause" did not give rise to difficulties in terms of article 9 of the Covenant, as that article referred specifically to arbitrary detention. She had a number of other concerns, however, and would like further information on what was meant by "other prerequisites for detention on remand". She wondered whether that referred to the danger of flight by the suspect, or of tampering with witnesses or evidence.

25. With reference to the same paragraph, she wished to know for what length of time a court might authorize a prolongation of detention on remand and whether such prolongation could be followed by a further prolongation. She also wished to know by what point in time charges had to be brought, bearing in mind the disturbing case in the past where detainees had been held in solitary confinement for 100 days before charges had been brought. She also asked at what point a person held for inquiry for a maximum of six hours (and under extraordinary circumstances for an additional six hours) would have access to a lawyer (para. 83) and when a child under inquiry would have access to an adult.

26. Turning to the new legislation on psychiatric treatment, she wished to know at what point recourse could be had to the courts. She wondered whether it was within four weeks, since that was the limit on compulsory treatment. If her supposition was correct, she also wondered whether that created a problem in the context of the courts' obligation to decide without delay on the lawfulness of detention. She also asked what was meant by the phrase "as a rule" in the answer given on the appointment of official counsel.

27. Mr. FODOR said that while the report was excellent both in substance and in form, he wished to make one minor comment regarding form, namely, that paragraph 53, instead of giving information, simply referred to a different report to a different body in which such information was to be found. He did not think that was appropriate in a report to the Human Rights Committee, which was an independent treaty-monitoring body. Referring to paragraph 86 of the report, on supervision as an alternative to detention on remand, he sought information on any other cases in which detention on remand might be applicable; on the occasions when the authorities should, and when they might, apply supervision; and on the requirements for supervision.

28. Turning to paragraph 87, he asked what reasons there might be other than criminal charges for a citizen to be taken into custody, and why it had been deemed necessary to establish special commissions.

29. Mr. SADI, referring to the earlier statement that it had been the experience of Sweden that prompt trials deprived both the prosecution and the defence of time to prepare their cases, wondered why the judicial authority did not then resort to the granting of bail, which would allow more time for preparation.

30. He had the impression that aliens received a lower standard of justice than Swedes, in that they could be held in detention for longer periods. As the Covenant made no mention of such a difference in treatment of citizens and aliens, he wondered whether the discrepancy could be removed.

31. Turning to the issue of compulsory care and the fact that drug-addicted minors could be committed to compulsory care by their parents, he asked whether an adult could also be forced to seek such treatment.

32. Mr. LALLAH said he found it disturbing that the decision to commit a person to compulsory care was entirely in the hands of the police, and did not have to be justified to the courts. He wished to know how often a compulsory care order could be renewed. Since the consumption of alcohol was not in itself a crime, he found it disturbing that it should be left to the police to decide how much use constituted abuse.

33. Mr. CORELL (Sweden), responding to the question put by Mr. Mavrommatis regarding compulsory care and his concern about the adequacy of safeguards, explained that the limit for compulsory care was six months and could not be exceeded. Furthermore, all compulsory care orders were subject to examination by the courts.

34. With regard to the question of compulsory care orders being in the hands of the police, he reminded the meeting that the moment when a decision on compulsory care had to be made was often very dramatic, in that, for example, the potential patient was a threat to himself or those around him. In addition, any compulsory care order had to be reported to an administrative court within four days.

35. On the use of the term "reasonable suspicion" to replace "probable cause" or "reasonable grounds", he explained that there had been considerable discussion in Parliament on whether easing the level of proof required might be a reasonable way of solving a problem that had been encountered, namely, that if there was very little time in which to prepare a request for detention on remand, there might be very little material for the prosecution to offer the judge. The statistics showed, however, that the change of language had not caused major differences in the number of detentions on remand, but only in the speed with which decisions were taken. There was, admittedly, a risk of abuse and the Swedish Parliament would keep the application of the provision under review.

36. In response to the question on the addition of a provision to chapter 2, section 8, of the Constitution, he said that Sweden felt that, in the light of its international commitments, a person deprived of his or her liberty should always have recourse to the courts. Since such issues were dealt with by ordinary legislation, at a level lower than the Constitution, the risk could not be taken that the legislature might omit to lay down that right in the general law. The

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right was therefore laid down in the Constitution, ensuring that if deprivation of liberty occurred without there being an indication in law as to where the case was to be considered, it could always be considered under the constitutional provision, presumably in the court of first instance in Stockholm.

37. Mr. Aguilar, Vice-Chairman, took the Chair.

38. Turning to the question by Mr. Mavrommatis as to what kind of other body might take decisions on compulsory psychiatric care, he explained that, in the past, decisions on commitment to compulsory care had sometimes been taken by a board specially constituted for the purpose. Under the law, the chairman of such a board had to be a judge, and in consequence the boards had been considered of equal status with the courts. Nowadays, however, such decisions were taken by the administrative courts of first instance.

39. Mr. LEMPERT (Sweden), turning to the question of the three-day period referred to in paragraph 94 of the report, explained that certain prerequisites had to be met in alien matters for legal counsel to be provided in the first three days. For instance, the complexity and gravity of the situation were determining factors. Once an alien had been in custody for three days, however, he was automatically entitled to legal counsel. Such aliens were very often in the country illegally anyway. The three-day waiting period was a maximum, and sometimes the period of custody was no longer than the time required to execute an expulsion order. However, legal counsel was always provided in such cases.

40. Mr. CORELL (Sweden), referring to the placement of young offenders, concerning which Sweden had made a reservation (para. 104), said that there were in fact extremely few children behind bars in Sweden. There had been juvenile prisons in the past, but they had not been considered beneficial and had been abolished. Furthermore, it would be a mistake to conceive of a prison as housing numerous inmates crowded together in cells. In Sweden, there was no more than one person to a cell, cells had a radio and sometimes a television, and so on. Whether it would actually be to the advantage of a young person to be placed with adult prisoners was, he felt, a question which could be entrusted to those actually engaged in the care of prisoners. It must also be remembered that some prisons contained perfectly respectable people who were serving a sentence only because they had driven a car after drinking too much alcohol. Such persons might even serve as an example to younger prisoners.

41. Turning to the questions which Mrs. Higgins had raised concerning bail, he recalled that the Scandinavian countries in general did not view bail very positively. It was felt that since very few people would have sufficient money to pay bail, institution of a bail system would be an infringement of citizens' equality before the courts. As for the "other prerequisites" referred to in paragraph 81, they were enumerated in chapter 24, section 1, of the Swedish Code of Judicial Procedure. As Mrs. Higgins had rightly conjectured, those prerequisites included the risks that the prisoner might abscond, might destroy evidence or otherwise hamper the investigation, or might continue the criminal activity.

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Detention on remand was also authorized if the crime in question carried a statutory minimum penalty of two years' imprisonment.

42. With regard to the prolongation of detention on remand, the general rule was that, although possible, it should be avoided. The deadline for presentation of charges by the prosecution was specified by the judge ordering the detention on remand, but the usual deadline was two weeks.

43. With regard to the "disturbing case" to which Mrs. Higgins had referred, that had been a difficult case involving very special circumstances, with implications for two other countries. There had been a danger that the accused might destroy evidence, and that danger had justified the solitary confinement. Under normal circumstances, however, the regulations on detention on remand provided specifically that if a prisoner wished to, he was free to mingle with other prisoners in the same place of detention.

44. With regard to the question on consideration of compulsory care orders by the courts, the authorities had to bring the whole matter before the court within four weeks, but the patient had a right to raise it before the court immediately.

45. As a rule, official counsel was always available to patients. However, a patient might not wish to avail himself of counsel or might choose to be represented by a support person. The situation was much more difficult than in the courts, since a patient who might not have committed a crime was nevertheless deprived of his or her liberty.

46. He acknowledged that the references which Sweden had made to other documents in its third periodic report might complicate the Committee's work. Such references had been made in order to save space and avoid repeating information already available in other reports. Perhaps the Secretariat would be able to help members of the Committee obtain the necessary documents. Sweden was more than willing to follow the Committee's advice regarding the preparation of future reports.

47. Other situations in which a person could be remanded in custody involved children, the mentally ill and persons who abused drugs or alcohol. Another case was that of aliens who had entered Sweden illegally and were not allowed to remain in the country. All those situations were dealt with under Swedish law, and decisions could always be examined by a court.

48. Paragraph 81 of Sweden's third periodic report dealt exclusively with pre-trial situations. In his previous comments, he had referred only to a pre-trial situation in which the prosecutor presented a request for detention on remand together with information received from the police. Because of the short time-limit, the information available was not as substantial as it had previously been. However, in a trial situation, the person was on remand and the prosecutor was required to present his material and his indictment to the court. If the prosecutor was unable to do so within the prescribed time-limit, he would have to ask the court to authorize a prolongation of the detention on remand; that would

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give him more time to obtain additional information and provide the court with more substantial material for the trial.

49. In Swedish society, bail would be very difficult to institute. Above all, it would give rise to objections on the part of poor people who were unable to pay it. That was why the Swedish legal system provided other rules whereby a person could accept a ban on leaving his or her home town. If the person agreed, he or she might not be subject to detention on remand but might simply have to remain in the town and report to the police at certain intervals.

50. The only difference in the treatment of Swedes and aliens with respect to detention on remand arose when an alien had no place of residence in Sweden. For example, a tourist who came to Sweden and committed a serious crime might be subject to detention on remand. The cases to which Mr. Lempert had referred did not involve persons suspected of committing a crime, but attempts by aliens to enter Sweden unlawfully. In such situations, aliens had to be taken into custody to prevent them from going into hiding.

51. There were situations in which adults might be subject to compulsory care. One such situation would be when a mentally ill person was deemed to pose an imminent threat to himself or others. Other situations might involve persons who, as a result of their abuse of drugs or alcohol, had developed a serious disease and might die if they did not receive urgent medical care. Since all such cases were examined thoroughly by the administrative courts, that kind of deprivation of liberty could not be used for other purposes. If the police were involved in such cases, the detained person could always bring the matter before a court. Otherwise, the authorities must bring the case before a court within four weeks. In cases where the police had to apprehend individuals and take them to hospital, doctors were required to prepare a certificate to be presented to the hospital where the apprehended person was to be detained. In such cases, a four-day rule applied.

Right to a fair trial (article 14 of the Covenant) (section IV of the list of issues)

52. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of Sweden, namely: the procedure and criteria for the selection of professional and lay judges who served in the general courts, as well as their role in reaching decisions.

53. Mr. CORELL (Sweden) said that, in Sweden, being a professional judge entailed holding a State office. When persons were considered for that office, only such objective factors as merit and competence were considered. In that context, merit meant familiarity with the demands and routines of the office. Competence meant general and special insights and knowledge which would be valuable to the person holding the office; it included study background, education and suitability for the office in question.

(Mr. Corell, Sweden)

54. Permanent judges were appointed by the Government. Judges at the highest level did not apply for office but were asked to take office. Other positions as permanent judges were applied for. A special board prepared the applications and submitted a proposal to the Government. As of 1 July 1990, the applicant's competence took priority over his or her merit.

55. According to chapter 4 of the Code of Judicial Procedure, a professional judge must be a Swedish national and must also have a law degree. A person in a state of bankruptcy could not serve as a judge.

56. Any person aspiring to become a judge applied for a position as a trainee in a court of appeal or an administrative court of appeal. Prior to that, the person had to have obtained a law degree and served a two-year period of legal internship in a lower court. Only persons who could be expected to pass the trial period were accepted as trainees. There were three compulsory elements in the training to become a permanent judge: the trainee period in a court of appeal for about nine months, followed by practice as a judge in a lower court for about a year and, finally, training in the court of appeal. The person was then appointed associate judge of the court of appeal and was eligible to apply for office as a permanent judge. Normally, before becoming a permanent judge, the judge-to-be held other positions such as defence attorney, prosecutor or corporate lawyer.

57. Lay judges were chosen by means of elections. Those who served in the general courts were elected by the municipal or city councils, which in turn were elected through general elections. Other lay judges were elected by county councils. Efforts were made to ensure that the composition of the lay judges in a court was representative with regard to age, sex and occupation.

58. Lay judges were elected for three years. Every Swedish national who was not a minor or in a state comparable to legal incapacity (Sweden had abolished the concept of legal incapacity) could be elected as a lay judge for the municipality or the county in which he or she lived. Certain categories of professionals, such as professional judges and prosecutors, could not serve as lay judges.

59. With regard to their role in reaching decisions, professional and lay judges each had their own vote. In criminal proceedings, for example, a vote was taken when there were differences of opinion with respect to what decision should be reached. The professional judge who had served the shortest time voiced his or her opinion first. If lay judges participated in the court, they voiced their opinions last. Where there was a vote, the decision taken corresponded to the opinion which obtained more than half of the votes. If two different opinions each obtained 50 per cent of the votes, the more lenient opinion prevailed. If there was no such opinion, the one which received half the votes including the chairman's prevailed.

60. Mr. ANDO requested information about the procedure for promoting judges and wished to know whether the judiciary could play any role in appointing judges.

61. Mrs. HIGGINS wished to know what percentage of the judiciary comprised people who had previously been in government service in the broadest sense of the term.

62. The Chairman resumed the Chair.

63. Mr. CORELL (Sweden) said that, in Sweden, there were a number of safeguards against the Government's misuse of its power to appoint judges. If the Government appointed judges who did not fulfil their obligations or were not able to hold service or did not merit their service, there would be signals from the mass media, the general public and other judges. The Government, moreover, always sought to appoint the most suitable persons for such positions.

64. Normally, persons of a similar age group and with similar merits applied for a certain post. Vacancies involving the post of circuit judge were dealt with by a board which submitted proposals to the Government regarding the most suitable candidates for the post. However, most permanent judges in Sweden were appointed by the Government, since the Government wished to ascertain that the persons filling those posts had sufficient training and experience and had a general overview of the Swedish legal system. Because of the qualifications required, only a rather limited group of candidates could be considered. In future, there was likely to be a more open attitude towards the recruitment of judges from quarters other than those which traditionally formed the basis for the appointment of chief justices in Sweden. Judges who had had experience in government office might be even more aware of the importance of making a clear distinction between the executive and the judiciary.

65. Mr. LALLAH asked whether there were any judges or legal advisers in Sweden who were not ethnic Swedes. He also wished to know how many women tended to join the legal profession.

66. Mr. ANDO asked whether there were any restrictions on the nationality of lawyers practising in Sweden.

67. Mr. DIMITRIJEVIĆ noted that, in Sweden, there were no strict rules regarding the evidence which could be submitted to a court. He inquired whether there was a way to prevent the submission of evidence which violated the right to privacy. For instance, what would happen if a telephone had been tapped without the judge's permission and the recorded telephone conversation was submitted as evidence to the court?

68. If a defendant's statement in court contradicted his earlier statement to the police, the defendant was obliged to explain why he had changed his statement. He wished to know whether the defendant's statement to the police would be recognized by the court in cases where the court was not satisfied with the defendant's reasons for changing his statement. Lastly, he requested an explanation of the term "unnecessary evidence" in paragraph 182 of the report.

69. Mr. LALLAH asked whether the court's refusal to accept the defendant's reasons for changing his statement would be a violation of article 14, paragraph 3 (g), of

the Covenant, which stated that the accused should not be compelled to testify against himself or to confess guilt.

70. Mr. CORELL (Sweden), replying to Mr. Lallah, said that, although he had no statistics, there were many women in the legal profession in Sweden. Women accounted for 50 per cent of all applicants for trainee posts in courts of appeal. In future, there would be increasing opportunities for women in the legal profession. Concerning ethnic origin, the current Minister of Justice was in fact a refugee from the Baltic States.

71. According to chapter 8, section 2 (1), of the Code of Judicial Procedure, all lawyers practising in Sweden must be Swedish citizens. However, a person appearing as counsel before a court did not have to be a member of the Swedish Bar Association. There were, nevertheless, certain limitations on the right of such persons to appear before the courts; for example, they would not be accepted as official counsel in criminal proceedings. The Swedish Bar Association could make derogations from the rule that all lawyers must be Swedish citizens.

72. The basic rule on freedom of evidence was that a court freely assessed the evidence presented to it. There was a problem, however, with certain kinds of information which might have been acquired in a non-legal manner, and there had been a recent investigation in that regard with the details of which he was not familiar. With the Committee's permission, he would inform himself of those details and return to the subject later.

73. As to cases where a person might be required to explain why he was telling a story in court that differed from the one he told the police, and whether that requirement was in violation of article 14, paragraph 3 (g), of the Covenant, he pointed out that in Sweden no one was compelled to testify anything and there was no requirement, as there was in some countries, that a person appearing in court swear an oath to tell the truth. It was for the courts themselves to determine the truth, and it was only natural that a court should ask a defendant why he had changed his story, for its task was to compare his statements with the evidence of witnesses and other exhibits. Sometimes statements made to the police might not have been told freely, or a defendant who had told the police the truth might subsequently decide that that would not serve him well in court.

74. It was also up to the court to decide what kind of evidence was to be presented, and to decide whether the evidence submitted was necessary. A court's decision to bar evidence could be appealed when appealing against a judgement of a court of first instance, and if a court of second instance found that the court of first instance should have accepted certain evidence, it could send the case back to it.

75. In Sweden, confession was not sufficient to justify a verdict against an accused person. It had to be substantiated by facts or circumstantial evidence.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section V of the list of issues)

76. The CHAIRMAN read out section V of the list of issues concerning the third periodic report of Sweden, namely: (a) information concerning the findings and proposals of the National Council for Crime Prevention based on its review of experience to date in implementing legislation concerning restraining orders, and whether any new measures have been adopted to make the legislation more effective; (b) clarification, with respect to paragraph 147 of the report, as to why no possibilities of appeal exist in the case of expulsion on grounds of national security and presumed terrorist activities; (c) the review by the Parliamentary Committee of the provisions of section 3 of the Act on Terrorists and, if completed, the salient points of its report; and (d) clarification, in respect of paragraphs 140 and 143 of the report, of the appeals procedure against expulsion available in cases of refusal of entry or expulsion on grounds of an expired residence permit.

77. Mr. CORELL (Sweden) said with respect to section V (a) of the list of issues that restraining orders were another means of protecting individuals who had already been the victims of crime or who were being pursued and harassed by others. The National Council for Crime Prevention, which had reported in June 1989 on the first six months of application of the Act on Restraining Orders, had concluded that no amendments to the Act or its application were called for. During those first six months, restraining orders had been issued in 84 cases and 37 requests for restraining orders had been rejected; a handful of people had been convicted for not abiding by restraining orders in the period concerned. The Council's report had been handed over to the Commission against Violence established in November 1989, which had delivered its final report in November 1990 without suggesting any amendments to the Act. However, that should be seen in the light of the fact that in April 1990 there had been some amendments to it, to the effect that a person who failed to abide by the prohibition against visiting or contacting another individual might now be sentenced to one year's imprisonment instead of six months.

78. Mr. LEMPERT (Sweden), dealing with sections V (b), (c) and (d) of the list of issues, said that although new legislation was pending in the area of expulsion on grounds of national security and presumed terrorist activities, no real changes were being suggested for section 3 of the Act on Terrorists, for the same reason that there was no possibility of appeal in cases of expulsion of presumed terrorists. In such legislation, a balance had to be struck between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights. The existing legislation, which had been in force since 1975, was extremely limited and had concerned only some 20 people.

79. A committee set up to consider new legislation in that area had looked at how other countries solved the problem: most solved it in a more or less clandestine way with no genuine procedures, and none solved it in a manner which gave decision-making to the courts. The proposed new legislation would give the courts

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a more prominent role, although not the right to make a decision. The proposed expulsion of a presumed terrorist could be submitted to a court for an opinion as to whether the evidence was sufficient and the criteria for expulsion had been met, but ultimately such matters concerned national security and foreign policy and had to be left to the Government to decide, thereby ruling out the possibility of appeal. Only the Government could decide whether a group was to be regarded as a terrorist group or as a bona fide freedom-fighting organization.

80. With the exception of expulsions under the Act on Terrorists, all expulsions could be appealed against, either to the Government, in which event the case could be tried in two instances, or to the Central Bureau of Immigration if the expulsion order had been decided upon by the police. Where an appeal related to the asylum process or to the withdrawal of a right, for example to a residence permit, the appeal was to the highest instance, the Government. A committee set up by the Government to look into the procedure had suggested the establishment of a special, independent board to consider appeals, and the matter would probably be coming before the Swedish Parliament in the near future.

81. Mrs. HIGGINS said that the reason given for the absence of the possibility of appeal by a presumed terrorist against expulsion on grounds of national security - that a balance had to be struck between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights - was not the reason given in article 13 of the Covenant, which stipulated that normally the case should be reviewable by a competent authority unless compelling reasons of national security required otherwise. Each individual case, therefore, had to be investigated to see whether there were compelling reasons of national security that made it non-reviewable. The suggestion that simply because a person was in the category of presumed terrorist, his continued presence in the country was never compatible with national security and his case was non-reviewable was clearly contrary to the wording of article 13 of the Covenant.

82. Turning to the case of the Turkish citizens of Kurdish descent (paras. 123-133), she sought clarification as to the length of time before their town arrest could be challenged, how long it took to go before the District Court of Stockholm, and how long before it went before the Supreme Court. If the Supreme Court had ruled that town arrest was not challengeable in the courts and was a matter properly for Government determination, the possibility arose of limitations of the rights under the Covenant that were not subject to judicial review. Those Kurds who had been released had presumably not been released as a result of a court decision. It was her understanding that under new legislation the category of town arrest was to be abolished, but that there were other, more limited, methods of control of those who were regarded as potential terrorists, involving having to report once a week to the police and the possibility of telephone-tapping and searches. That being so, it was difficult to understand why the normal rules that permitted telephone-tapping and searches in restricted circumstances were not applicable; if it were the case that mere potentiality of crime was not enough to permit such methods of control, problems were raised in respect of an individual's

(Mrs. Higgins)

liberties. Non-reviewable designation by a Government as a potential terrorist meant that one's liberties were intruded upon as a consequence of that designation, and it would be comforting to know that it operated only with respect to persons who would otherwise have had to be expelled back to their country of origin. She asked whether the Swedish delegation would be in a position to provide a guarantee that, if that were not the case, the intrusion upon liberties as a result of designation by the Government as a potential terrorist would not operate under the new Act.

83. Mr. MYULLERSON asked, with respect to paragraph 124 of the report, whether there had been any developments in the case of the Turkish citizens of Kurdish descent since the report had been drafted and whether, with respect to paragraph 127, the reversal of two of the expulsion orders in May 1989 had meant exemption from restrictions.

84. Mr. LEMPERT (Sweden) said that when dealing with the absence of the possibility of appeal against expulsion of presumed terrorists, he had spoken not only of the need to strike a balance in the relevant legislation between the interest of effective measures and the interest of guaranteeing the individual the best possible security when it came to defending his rights, but also of the fact that since the legislation had come into force in 1975 it had affected only a very small group of people - some 20 individuals who, in the view of the Swedish Government, represented a threat to national security.

85. As for the presumed terrorists connected to the PKK organization, the Government of Sweden deemed them to be potential terrorists, and therefore extremely dangerous to Swedish society, in view of two murders committed on Swedish territory and suspicion of involvement in other actions. There was, however, some protection even for presumed terrorists: they could not be expelled to face torture, death or similar circumstances. Of the nine people originally in the group, one was serving a prison sentence and the expulsion orders on two others had been waived; the two were now residing lawfully in Sweden, having been joined by their families. With respect to the remaining six, the control method of town, or more accurately municipality, arrest had been lifted, and they now had to report once a week to the police. It had been suggested to the Government that the role of the courts in the area concerned be strengthened, and if any of the surveillance measures ordered in respect of a presumed terrorist remained after three years, it would be for the courts alone to decide whether or not the prerequisites still existed for that surveillance to continue; the Government would in any event during that period have periodically reviewed the need for surveillance.

86. Turning to the question as to why the normal rules permitting telephone-tapping and searches in restricted circumstances could not be extended to presumed terrorists, he said that the situation represented by such cases was not a normal one. If a presumed terrorist was allowed to remain in the country for humanitarian reasons, the need for control might still exist even if the person concerned had not yet committed a criminal act.

87. Mr. CORELL (Sweden) said that even the most open of societies sometimes found themselves obliged to take measures they did not want to take, in order to deal with a situation to which they could see no other solution. Sweden did not appreciate people to whom it had given sanctuary committing murder on its streets.

The meeting rose at 1 p.m.